



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### TIDEWATER REGIONAL OFFICE

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Francis L. Daniel  
Regional Director

## **VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO**

### **Southeastern Public Service Authority of Virginia Solid Waste Permit No. 417**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§10.1-1182 *et seq.*, 10.1-1402, 10.1-1405, and 10.1-1455 between the Virginia Waste Management Board and the Southeastern Public Service Authority of Virginia for the purpose of resolving certain violations of environmental law and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1401 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Facility" means the Southeastern Public Service Authority of Virginia Regional Landfill, Solid Waste Permit #417.
6. "Order" means this document, also known as a consent order.

7. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. “Regulations” means the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 *et seq.*

### **SECTION C: Findings of Fact and Conclusions of Law**

1. The Southeastern Public Service Authority of Virginia (“SPSA”) owns and operates the Facility, which is a sanitary landfill located on Bob Foeller Drive in Suffolk, Virginia. SPSA was issued Solid Waste Permit #417 (“Permit”) for the Facility by the Virginia Department of Health on September 12, 1983. On November 7, 2005, the Permit was amended to incorporate Cell VI.
2. Waste collected at the Facility is placed in “Cells”; currently the Facility consists of six Cells, with Cells V and VI each divided into four “Quadrants”. Each Quadrant is numbered per the leachate sump pump that it contains: Cell V contains sump pumps Nos. 1 through 4; Cell VI contains sump pumps Nos. 5 through 8. According to 9 VAC 20-80-10 of the Regulations, liquids (such as storm water) that passes through solid waste becomes “leachate”. Leachate from Cell VI is pumped to an on-site leachate pond and then discharged to the Hampton Roads Sanitation District (“HRSD”) as authorized by HRSD industrial discharge permit #0087.
3. According to a report dated October 2, 2006 from SPSA, on August 29, 2006 through September 2, 2006, high amounts of storm water were reported at the Facility and collected in Cell VIA Quadrant 5. According to SPSA, Quadrant 5 was active with previous waste placement for building the entrance road). The sump pump in Quadrant 5 continuously pumped leachate into the on-site leachate pond through September 5, 2006, when it was shut off since the leachate pond had reached capacity and there was concern that pumping to HRSD could not keep up with the volume of leachate being pumped into the pond from the Cell VIA Quadrant 5 sump pump.
4. On September 4, 2006, SPSA personnel placed a 2” submersible pump into Cell VIA, Quadrant 5, and pumped accumulated leachate to the Facility perimeter storm water ditch. The on duty Facility operator erroneously identified this water as storm water and not leachate, and as such made the determination that his actions were acceptable. The Facility perimeter storm water ditch is not authorized to receive leachate from waste cells. This Facility perimeter storm water ditch discharges into the onsite storm water management pond which discharges from outfall #002 pursuant to the Permit into Burnett’s Mill Creek, a tributary to the Nansemond River and lower James River. The 2” submersible pump in Quadrant 5 continuously pumped leachate from September 4, 2006 until September 8, 2006 for a total discharge of 218,880 gallons to the Facility perimeter storm water ditch with subsequent discharge to Burnett’s Mill Creek.

5. On September 5, 2006, SPSA staff observed that accumulated leachate from Cell VIA, Quadrant 5, had at some point overflowed into inactive Cell VIA, Quadrant 7, contaminating Quadrant 7 with the leachate from Quadrant 5. On September 6, 2006, SPSA staff placed a 4" Godwin pump into Quadrant 7 and pumped the accumulated leachate into the Facility perimeter storm water ditch, making the erroneous determination that the storm water was not leachate. According to the report dated October 2, 2006 from SPSA, the 4" Godwin pump in Quadrant 7 continuously pumped leachate from September 6, 2006 to September 8, 2006 for a total discharge of 1,934,000 gallons to the Facility perimeter storm water ditch with subsequent discharge to Burnett's Mill Creek. SPSA reported that the total discharge pumped from Cell VIA, Quadrants 5 and 7 into the storm water ditch with subsequent discharge to Burnett's Mill Creek was 2,152,880 gallons. According to SPSA, this volume was determined by applying pump design data to the time the pump was in operation.
6. On September 8, 2006, SPSA Environmental Supervisory personnel discovered that the leachate had been mistakenly identified as storm water, directed that the pumping activities cease immediately, notified DEQ via phone of the above listed discharges, and provided notification by letter dated September 15, 2006.
7. On September 8, 2006, SPSA staff took surface water samples at the Cell VIA storm water ditch, the storm water management pond, and the storm water effluent. Results received by SPSA on September 13, 2006 indicated only trace quantities of Zinc and Chemical Oxygen Demand.
8. Module II (Operations Manual), Title 6.1.1 of the Permit specifies that leachate from Cells V and VI shall be pumped to HRSD. There is no provision in the Permit that allows for leachate to be pumped to State waters. 9VAC 20-80-240.B of the Regulations requires that a landfill shall be operated in accordance with the permit. Furthermore, 9 VAC 20-80-290.D.1 of the Regulations states that collected leachate shall be discharged directly or after pre-treatment into a line leading to the publicly owned treatment works or other permitted wastewater treatment facility. SPSA violated the Permit and the Regulations by discharging a total of 2,152,880 gallons of leachate into State waters.
9. 9 VAC 20-80-570 of the Regulations requires verbal reporting of noncompliance conditions within 24 hours from the time the permittee becomes aware of the circumstances, with written submission of the circumstances within 5 days. SPSA Environmental supervisory personnel reported by telephone the incident promptly on September 8, 2006 following the discovery of that the pumping of leachate to State waters had begun on September 4, 2008. A written report was submitted on September 15, 2006. However, SPSA as the "permittee" violated the Regulations by failing to provide verbal reporting for almost 4 days from the start of the discharge on September 4, 2006 and written notification for 11 days.

10. In a meeting with SPSA on October 3, 2006 as well as in documents provided by SPSA that outlined the events that occurred from August 29, 2006 to September 8, 2006 at the Facility, SPSA has reportedly instituted changes in its Environmental Management System to eliminate the potential for pumping unpermitted leachate discharges into State waters.
11. DEQ issued SPSA a Notice of Violation on November 3, 2006 advising of the above facts and applicable regulatory and statutory citations.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455, and upon consideration of Va. Code § 10.1-1186.2, the Board orders SPSA, and SPSA agrees, to perform the actions described below and in Appendix A of this Order. In addition, the Board orders SPSA, and SPSA voluntarily agrees, to a civil charge of \$14,000 in settlement of the violations cited in this Order, to be paid as follows:

1. SPSA shall pay \$1,400 of the civil charge within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

The payment shall include SPSA's Federal ID number and shall identify that payment is being made as a result of this Order.

2. SPSA shall satisfy \$12,600 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix A of this Order.
3. The net project cost of the SEP to SPSA shall not be less than the amount set forth in Paragraph D.2. If it is, SPSA shall pay the remaining amount in accordance with Paragraph D. 1 of this Order, unless otherwise agreed to by the Department. "Net project costs" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.
4. By signing this Order SPSA certifies that it has not commenced performance of the SEP.

5. SPSA acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by SPSA to a third party, other than as specified in Appendix A, shall not relieve SPSA of its responsibility to complete the SEP as described in this Order.
6. In the event it publicizes the SEP or the SEP results, SPSA shall state in a prominent manner that the project is part of a Consent Order.
7. The Department has the sole discretion to:
  - a. Authorize any alternate, equivalent SEP proposed by SPSA; and
  - b. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
8. Should the Department determine that SPSA has not completed the SEP, or alternate SEP, in a satisfactory manner; the Department shall so notify SPSA in writing. Within 30 days of being notified, SPSA shall pay the amount specified in Paragraph D.2., above, as provided in Paragraph D.1., above.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of SPSA for good cause shown by SPSA or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to SPSA by DEQ on November 3, 2006. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For the purposes of this Order only, SPSA admits the jurisdictional allegations in the Order but does not admit the factual allegations or legal conclusions contained herein.
4. SPSA consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. SPSA declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding

authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by SPSA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. SPSA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. SPSA shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. SPSA shall notify the TRO Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the TRO Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and SPSA. Notwithstanding the foregoing, SPSA agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to SPSA. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve SPSA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, SPSA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of April 3, 2008.

Francis L. Daniel

Francis L. Daniel

SPSA voluntarily agrees to the issuance of this Order.

By: [Signature]

Date: February 21, 2008

Commonwealth of Virginia

City/County of Chesapeake

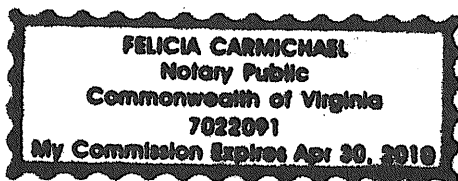
The foregoing document was signed and acknowledged before me this 21<sup>st</sup> day of February, 2008, by John Hadfield, who is  
(month) (name)

Executive Director of SPSA, on behalf of SPSA.  
(title)

Felicia Carmichael

Notary Public

My commission expires: April 30, 2010



## APPENDIX A

SPSA shall perform the SEP identified below in the manner specified in this Appendix.

1. The SEP to be performed by SPSA is the payment of \$12,600 to the Elizabeth River Project "Living River Restoration Trust", c/o The Elizabeth River Project, 475 Water Street 103, Portsmouth, VA 23704.
2. The SEP shall be completed within 30 days of the effective date of this Order.
3. SPSA shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Order. SPSA shall submit the final report to the Department within 45 days from the effective date of the Order.
4. If the SEP has not or cannot be completed as described in the Order, SPSA shall notify DEQ in writing no later than 10 days prior to the due date. Such notification shall include:
  - a. an alternate SEP proposal, or
  - b. payment of the amount specified in Paragraph D.2 as described in Paragraph D.1.
5. SPSA hereby consents to reasonable access by DEQ or its staff to property or documents under the party's control, for verifying progress or completion of the SEP.
6. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

Francis L. Daniel  
Department of Environmental Quality  
Tidewater Regional Office  
5636 Southern Blvd  
Virginia Beach, VA 23462